

STATE OF NORTH DAKOTA

DEPARTMENT OF HUMAN SERVICES

Disability Services Division
1237 West Divide Ave., Ste.1A
Bismarck, ND 58501-1208

Request For Proposal (RFP)

RFP Title: Fiscal Agent Services for Self Directed Supports Waivers

RFP Number: 325-06-20-012

Date of Issue: April 7, 2006

Purpose of RFP: The Department of Human Services is soliciting proposals for one statewide provider of Fiscal Agent services for Developmental Disabilities Case Management consumers receiving Self Directed Supports

Offerors are not required to return this form.

Procurement Officer: Deb Balsdon
Disability Services Division

TABLE OF CONTENTS

Introduction and Instructions

- 1.01 Purpose of the RFP
- 1.02 Contact Person, Telephone, Fax Numbers and E-mail
- 1.03 RFP Schedule
- 1.04 Return Mailing Address and Deadline for Receipt of Proposals
- 1.05 Assistance to Offerors with a Disability
- 1.06 Deadline for Receipt of Questions and Objections
- 1.07 Approved Vendor Registration Requirements
- 1.08 Pre-proposal Conference
- 1.09 Amendments to the RFP
- 1.10 News Releases
- 1.11 Notice Provided

SECTION TWO

Background Information

- 2.01 Background Information
- 2.02 Budget

SECTION THREE

Scope and Schedule

- 3.01 Scope of Work
- 3.02 Location of Work
- 3.03 Prior Experience
- 3.04 Required Licenses
- 3.05 Federal Requirements
- 3.06 Contract Schedule

SECTION FOUR

General Contract Information

- 4.01 Contract Term, Extension and Renewal Options
- 4.02 Standard Contract Provisions
- 4.03 Proposal as a Part of the Contract
- 4.04 Additional Terms and Conditions
- 4.05 Supplemental Terms and Conditions
- 4.06 Contract Approval
- 4.07 Contract Changes – Unanticipated Amendments
- 4.08 Taxes and Taxpayer Tax Identification
- 4.09 Proposed Payment Procedures
- 4.10 Termination for Default

SECTION FIVE

Evaluation Criteria and Contractor Selection

- 5.01 Understanding of the Project
- 5.02 Methodology Used for the Project
- 5.03 Management Plan for the Project
- 5.04 Experience and Qualifications
- 5.05 Contract Cost

SECTION SIX

Proposal Format and Content

- 6.01 Proposal Format and Content
- 6.02 Introduction
- 6.03 Understanding of the Project
- 6.04 Methodology Used for the Project
- 6.05 Management Plan for the Project
- 6.06 Experience and Qualifications
- 6.07 Cost Proposal
- 6.08 Required Enclosures

SECTION SEVEN

Standard Proposal Information

- 7.01 Authorized Signature
- 7.02 State Not Responsible for Preparation Costs
- 7.03 Conflict of Interest
- 7.04 Offeror's Certification
- 7.05 Offer Held Firm
- 7.06 Amendments to Proposals and Withdrawal of Proposals
- 7.07 Alternate Proposals
- 7.08 Subcontractors
- 7.09 Joint Ventures
- 7.10 Disclosure of Proposal Contents and Compliance with North Dakota Open Records Laws
- 7.11 Evaluation of Proposal
- 7.12 Right of Rejection
- 7.13 Clarification of Offers
- 7.14 Discussion and Best and Final Offers
- 7.15 Preference Laws
- 7.16 Contract Negotiation
- 7.17 Notice of Intent to Award – Offeror Notification of Selection
- 7.18 Protest and Appeal

SECTION EIGHT

Attachments

- 8.01 Attachments
 - A. Proposal Evaluation Form
 - B. Contract Template

SECTION ONE INTRODUCTION AND INSTRUCTIONS

1.01

Purpose of the RFP

The Department of Human Services, Disability Services Division, hereafter known as “purchasing agency” is soliciting proposals for one statewide provider of Fiscal Agent services for Developmental Disabilities Case Management consumers receiving Self Directed Supports.

1.02

Contact Person, Telephone, Fax, E-mail

PROCUREMENT OFFICER: Deb Balsdon
PHONE: (701) 328-8936
FAX: (701) 328-8969
TTY Users call: 1-800-366-6888 (Relay North Dakota)
E-MAIL: sobald@state.nd.us

The procurement officer is the point of contact for this RFP. All vendor communications regarding this RFP must be directed to the procurement officer. Unauthorized contact regarding the RFP with other State employees of the purchasing agency may result in the vendor being disqualified, and the vendor may also be suspended or disbarred from the state bidders list.

1.03

RFP Schedule

This schedule of events represents the State’s best estimate of the schedule that will be followed for this RFP. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate RFP schedule is as follows:

- RFP Issued: April 7, 2006
- Deadline for receipt of questions and objections related to the RFP: April 19, 2006
- Deadline for answers to questions and objections related to RFP: April 24, 2006
- RFP Due Date: May 1, 2006
- Proposal Evaluation Committee evaluation completed by approximately: May 8, 2006
- State issues Notice of Intent to Award a Contract approximately: May 10, 2006
- State issues contract approximately: May 24, 2006
- Contract start: July 1, 2006

1.04

Return Mailing Address and Deadline for Receipt of Proposals

Offerors must submit 7 copies of its proposal in a sealed envelope or package.

Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by the State before the deadline for receipt. Envelopes or packages must be addressed as follows:

DEPARTMENT OF HUMAN SERVICES

Disability Services Division
1237 West Divide Ave., Ste.1A
Bismarck, ND 58501-1208

Request for Proposal (RFP): Fiscal Agent Services for Self Directed Supports Waivers
RFP Number: 325-06-20-012

Proposals must be received by the purchasing agency at the location specified no later than 2:00 P.M., Central Time on May 1, 2006. Proposals will not be publicly read at the opening.

Proposals may not be delivered orally, by facsimile transmission, by other telecommunication or electronic means. Offerors may fax or electronically transmit signed proposals to a third party who must deliver the proposal to the location indicated above by the date and time designated as the deadline for receipt of proposals.

Offerors assume the risk of the method of dispatch chosen. The State of North Dakota ("State") assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt by the State. An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

1.05

Assistance to Offerors with a Disability

Offerors with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so that reasonable accommodation can be made.

1.06

Deadline for Receipt of Questions and Objections

Offerors must carefully review this solicitation, the contract, and all attachments for defects, questionable, or objectionable material. All questions must be in writing and directed to the purchasing agency, addressed to the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule of Events to allow issuance of any necessary amendments.

This will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which an award could not be made. Protests based on the content of the solicitation will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, before the time indicated in the Schedule of Events.

If the question may be answered by directing the questioner to a specific section of the RFP, then the procurement officer may answer the question over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make this determination. Oral communications are considered unofficial and non-binding on the State. The offeror must confirm telephone conversations in writing.

1.07

Approved Vendor Registration Requirements

Proposals will be accepted from vendors that are not currently approved vendors on the State's bidders list; however, the successful offeror will be required to become approved prior to award.

To become an approved vendor, offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry Office. Prospective offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list that will be used for this solicitation is commodity code 952-59.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.state.nd.us/csd/spo/vendor-resources.html>. Contact the Vendor Registry Office at 701-328-2773 or infospo@state.nd.us for assistance.

The successful offeror must register and become approved within 30 calendar days (Note: Procurement Officer may specify less time. At least 30 days is recommended for nonresident bidders to register) from the date of the Notice of Intent to Award. If an offeror fails to become approved by the time specified by the Procurement Officer, its proposal will be determined to be non-responsive, and its proposal will be rejected.

1.08

Pre-proposal Conference

No pre-proposal conference will be held for this RFP. Offerors are advised to carefully review the RFP and all attachments and submit all questions to the procurement officer by the deadline indicated for submission of questions in the schedule of events.

1.09

Amendments to the RFP

If an amendment to this RFP is issued, it will be provided to all offerors that were mailed a copy of the RFP and to those that have requested a copy of the RFP from the procurement officer.

1.10

News Releases

News releases related to this RFP will not be made without prior approval of the procurement officer or project manager designated by the State.

1.11

Notice Provided

Notice of this solicitation has been provided in accordance with N.D.C.C. § 54-44.4-09.

The Request for Proposal and any amendments to the RFP will be posted on the following website: <http://www.state.nd.us/humanservices>.

SECTION TWO

BACKGROUND INFORMATION

2.01

Background Information

Background information concerning this project is as follows:

Since 1984, the Disability Services Division has effectively implemented and managed a home and community based waiver for mentally retarded and developmentally disabled infants, children and adults. In order to provide an alternative to this current waiver, considering that individuals could live in a family home or in a home of their choice in the community and would have increased control over their services and supports, the Division submitted applications and received approval for a self-directed supports waiver for individuals with developmental disabilities who are ages three through adulthood. Self –directed supports helps individual consumers or families self-direct services needed to carry out an individual support plan. Supports include: self-directed in-home supports or disability related supports (skilled supports, materials and supplies, transportation) or employment supports. In addition, a budget is developed for the family by the Developmental Disabilities Case Manager based on a person-centered plan. The Fiscal Agent then works with the individual or family to provide support in managing the budget, paying employees or vendors for allowable expenses and keeping related financial records. The fiscal agent will also obtain background checks on support workers for all consumers.

2.02

Budget

A monthly Fiscal Agent fee will be paid for each enrolled consumer. This fee will be a separate billing and will not be deducted from individual budgets. The Fiscal Agent will cash flow consumer budgets prior to reimbursement from the Department of Human Services.

SECTION THREE SCOPE OF WORK

3.01

Scope of Work

Overview

The Department of Human Services, Disability Services Division (DSD), is soliciting proposals for Fiscal Agent services. These services assist the family or individual to manage and distribute funds contained in an individual budget including, but not limited to, the facilitation of the employment of service workers by the family or individual, including Federal, state, and local tax withholding/payments, unemployment compensation fees, wage settlements, fiscal accounting and expenditure reports, etc. This service will be delivered under a family or person-centered planning process.

The Developmental Disabilities Case Managers will provide Support Brokerage services to eligible consumers which includes the development of individual budgets, ongoing monitoring and quality assurance activities.

Description of Specific, Results-Oriented Tasks

The successful vendor must:

- 1) Understand the laws, rules and conditions that accompany the use of public resources;
- 2) Establish and maintain bonding;
- 3) Utilize accounting systems that operate effectively on a large scale as well as track individual budgets;
- 4) Meet the time lines for payments that meet individual needs within Department of Labor standards;
- 5) Develop and implement an effective payroll system that addresses all related tax obligations;
- 6) Generate service management, and statistical information and reports;
- 7) Provide needed training and technical assistance regarding the role of a Fiscal Agent to clients, their representatives, and others;
- 8) Act on behalf of the person and/or family receiving supports and services for the purpose of payroll reporting;
- 9) Make related payments as approved in the person's budget, authorized by the funding entity;
- 10) Generate payroll checks in a timely and accurate manner and in compliance with all federal and state regulations pertaining to "domestic service" workers;
- 11) Conduct background checks as required and maintain results in file;
- 12) Gather and process all employment related documentation, including verification of citizenship and execution of provider agreements in accordance with Medicaid standards;
- 13) Obtain authorization from the individual receiving supports;
- 14) Prepare and distribute an application package of information that is clear and easy for the individuals hiring their own staff to understand and follow;
- 15) Establish and maintain a record for each employee and process employment application package and documentation;
- 16) Utilize an accounting information system to invoice and receive support funds;
- 17) Utilize an accounting and information system to track and report the expenditures as specified by the funding entity;
- 18) Generate a detailed support funds expenditure report to the individual or their representative monthly in a declining balance format;
- 19) Quarterly generate a detailed expenditure report by individual budget and distribute to Support Brokers and DSD;
- 20) Withhold, file, and deposit Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and State Unemployment Tax Act (SUTA) taxes in accordance with federal Internal Revenue Service (IRS) and Department of Labor (DOL), and state rules (North Dakota Administrative Code).
- 21) Generate and distribute IRS W-2's, Wage and Tax Statements and related documentation annually to all support workers who meet the statutory threshold earnings amounts during the tax year by January 31;
- 22) File and deposit federal and state income taxes in accordance with federal IRS and state Department of Revenue Services rules and regulations;

- 23) Assure that employees are paid hourly rates in accordance with the federal and state Department of Labor Fair Labor Standards Act (FLSA);
- 24) Process all judgments, garnishments, tax levies or any related holds on an employee's funds as may be required by local, state or federal laws;
- 25) Distribute, collect and process all employee time sheets as summarized on payroll summary sheets completed by the person or their representative;
- 26) Prepare employee payroll checks, sending them to the client, representative or directly to the employee according to the Plan;
- 27) Annually obtain an independent audit and submit findings to DSD;
- 28) Keep abreast of all laws and regulations relevant to the responsibilities it has undertaken with regard to the required federal and state filings and the activities related to being a Fiscal Agent;
- 29) Establish a customer service mechanism in order to respond to calls from individuals or their representative employers and workers regarding issues such as withholdings and net payments, lost or late checks, reports and other documentation;
- 30) Customer service representatives should communicate effectively with people who have a variety of disabilities; and
- 31) Have a Disaster Recovery Plan for restoring software and master files and hardware backup if management information systems are disabled so that continuation of payroll and invoice payment systems remain intact.

3.02

Location of Work

No on-site performance is required and the State will not be providing workspace for the contractor.

3.03

Prior Experience

In order for offers to be considered responsive, offerors must meet the minimum prior experience requirements. An offeror's failure to meet these minimum prior experience requirements will cause its proposal to be considered non-responsive and its proposal will be rejected. The minimum experience requirements are:

Prior experience supporting consumers and managing their individual budget.

3.04

Required Licenses

At the time specified by the deadline for submission of proposals, the offeror must have and keep current any professional licenses and permits required by federal, state, and local laws for performance of this contract. Offerors that do not possess required licenses at the time proposals are due will be determined non-responsive.

3.05

Federal Requirements

The offeror must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

North Dakota Administrative Code 75-04-05-08(1)(c) states, "Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit shall be retained until final resolution. Each provider shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof."

3.06

Contract Schedule

This schedule of events represents the State's best estimate of the contract schedule that will be followed. If a component of this schedule, such as the award date, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate contract schedule is as follows:

- Contract start: July 1, 2006
- First contractor work period: July 1, 2006 – June 30, 2007
- Contractor submits first Quarterly Progress Report: October 1, 2006
- Follow-up debriefing: Quarterly for the first year and then semiannually

The contract will be from July 1, 2006 until March 31, 2009, based on satisfactory completion of contract requirements and availability of funds.

SECTION FOUR GENERAL CONTRACT INFORMATION

4.01

Contract Term, Extension and Renewal Options

The State intends to enter into a contract with an effective date beginning July 2006 and ending March 2009.

Upon termination of the contract, the contractor agrees to work cooperatively with the state and new contractor to coordinate transfer of appropriate records information and completion of required state and federal documentation.

This contract may be renewed upon satisfactory completion of the initial contract term. The state reserves the right to execute up to two options to renew this contract annually under the same terms and conditions for a period of 12 months each. This contract will not automatically renew. The State will provide written notice to the contractor of its intent to renew this contract at least 60 days before the scheduled contract expiration date.

4.02

Standard Contract Provisions

The successful offeror will be required to sign and submit the contract attached to this RFP (Attachment B). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal. No alteration of these provisions will be permitted without prior written approval from the purchasing agency.

Offerors are instructed to contact the procurement officer in writing by the deadline set for questions with any concerns regarding the contract provisions.

4.03

Proposal as a Part of the Contract

Part or all of this RFP and the successful proposal may be incorporated into the contract.

4.04

Additional Terms and Conditions

The State reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

4.05

Supplemental Terms and Conditions

Proposals including supplemental terms and conditions may be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's right's under any contract resulting from the RFP will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- (a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- (b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

4.06

Contract Approval

This RFP does not, by itself, obligate the State. The State's obligation will commence when the purchasing agency approves the contract. Upon written notice to the contractor, the State may set a different starting date for the contract. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

4.07

Contract Changes - Unanticipated Amendments

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project manager designated by the State will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of amendments.

The contractor will not commence additional work until the project director has secured any required State approvals necessary for the amendment and issued a written contract amendment, approved by the purchasing agency.

4.08

Taxes and Taxpayer Identification

The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. The State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

A contractor performing any contract, including service contracts, for the United States Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on material and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the North Dakota Tax Department at 701-328-3470 or visit its website at www.nd.gov/tax for more information.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-3125 or visit its web site for more information

4.09

Proposed Payment Procedures

The State will make individualized contract payments for eligible consumers on a monthly payment schedule. Allowable expenses within the consumer's individualized budget and costs for background checks will be processed and paid through the Medicaid Management Information System (MMIS). This will be handled separately from the contracted fee for Fiscal Agent services.

The State will not make any advanced payments before performance by the contractor under this contract.

4.10

Termination for Default

If the project manager designated by the purchasing agency determines that the contractor has refused to perform the work or has failed to perform the work with diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the State's right to termination under the contract provisions of the Service Contract, attached.

**SECTION FIVE
EVALUATION CRITERIA AND CONTRACTOR SELECTION**

**THE TOTAL NUMBER OF POINTS USED
TO SCORE THIS CONTRACT IS 100**

5.01

Understanding of the Project

Five percent (5%) of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

- [a] Has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- [b] How well has the offeror identified pertinent issues and potential problems related to the project?
- [c] Has the offeror demonstrated an understanding of the services the State expects it to provide?
- [d] Has the offeror demonstrated an understanding of the State's requirement regarding timely payments to consumers, employees and vendors?
- [e] Is the proposal submitted responsive to all material requirements in the RFP?

5.02

Methodology Used for the Project

Twenty five (25%) of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

- [a] Does the methodology depict a logical approach to fulfilling the requirements of the RFP?
- [b] Does the methodology match and achieve the objectives set out in the proposal?
- [c] Does the methodology have provisions for quality assurance?

5.03

Management Plan for the Project

Twenty five (25%) of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

- [a] How well does the management plan support all of the project requirements and logically lead to the services and deliverables required in the RFP?
- [b] How well is accountability completely and clearly defined?
- [c] Is the organization of the project team clear?

- [d] How well does the management plan illustrate the lines of authority and communication?
- [e] To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?
- [f] Does it appear that offeror can meet the schedule set out in the RFP?
- [g] Has the contractor gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- [h] Is the proposal practical, feasible, and cost effective?

5.04

Experience and Qualifications

Twenty five (25%) of the total possible points will be assigned to this criterion.

If the RFP required a minimum amount of experience or qualifications, no points will be awarded for meeting the minimum. Points will be awarded for experience and qualifications that exceed the stated minimums. Proposals will be evaluated against the questions set out below:

Questions regarding the personnel.

- [a] Do the individuals assigned to the project have experience on similar projects?
- [b] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?
- [c] How extensive is the applicable education and experience of the personnel designated to work on the project?

Questions regarding the firm.

- [d] Has the firm demonstrated experience in delivering similar services?
- [e] How successful is the general history of the firm regarding timely and successful completion of projects?
- [f] Has the firm provided contact information and permission to contact state agencies where they previously or currently provide Fiscal Agent type services for clients?

5.05

Contract Cost

Twenty Percent (20%) of the total possible evaluation points will be assigned to cost.

Any prompt payment discounts terms proposed by the offeror will not be considered in evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. § 44-08-01). The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be evaluated according to the method set forth in the Proposal Evaluation form attached to this RFP.

SECTION SIX PROPOSAL FORMAT AND CONTENTS

6.01

Proposal Format and Content

The State discourages overly lengthy and costly proposals; however, in order for the State to evaluate proposals fairly and completely, offerors must follow the format set out in this RFP and provide all information requested.

6.02

Introduction

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the State should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP. The proposal must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota).

Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

6.03

Understanding of the Project

Offerors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project, deliverables, project schedule, and contract terms and conditions. Offerors must also identify any pertinent issues and potential problems related to the project.

6.04

Methodology Used for the Project

Offerors must provide comprehensive narrative statements that set out the methodology it intends to employ. Offerors must illustrate how the methodology will serve to accomplish the work and provide the deliverables described in the scope of work within the State's project schedule.

6.05

Management Plan for the Project

Offerors must provide comprehensive narrative statements that set out the management plan it intends to follow and illustrate how the plan will serve to accomplish the work and furnish the deliverables described in the scope of work within the State's project schedule. Offerors must provide a narrative or organizational chart that describes the organization of the project team. The organizational chart must illustrate the lines of authority, designate the individual responsible and accountable for the completion of each component and deliverable of the RFP, and indicate where the work will be performed.

6.06

Experience and Qualifications

Offerors must describe the experience of their firm in completing similar projects. Additionally, offerors must information specific to the personnel assigned to accomplish the work called for in this RFP. Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:

- (a) title;
- (b) resume;
- (c) description of the type of work the individual will perform; and
- (d) the number of estimated hours for each individual named above.

If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

Offerors must provide 3 reference names and phone numbers for similar projects the offeror's firm has completed. The State reserves the right to contact any references provided by the offeror. Offerors are invited to provide letters of reference from previous clients.

6.07

Cost Proposal

All costs associated with the contract must be stated in U.S. currency.

Offerors proposal must identify their projected monthly Fiscal Agent fee per consumer.

If applicable, offerors should describe any reduced fees based on number of consumers served.

6.08

Required Enclosures

Offerors must provide all documents, samples, or other information specifically required in this RFP.

Samples of monthly expenditure reports

Training materials for consumers regarding working with a Fiscal Agent

SECTION SEVEN STANDARD PROPOSAL INFORMATION

7.01

Authorized Signature

An individual authorized to bind the offeror to the provisions of the RFP must sign all proposals.

7.02

State Not Responsible for Preparation Costs

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

7.03

Conflict of Interest

Offerors must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota). The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the offeror's proposal. The State's determination regarding any questions of conflict of interest is final.

7.04

Offeror's Certification

By signature on the proposal, an offeror certifies that it complies with:

- a) the laws of the State of North Dakota;
- b) North Dakota Administrative Code;
- c) all applicable local, state, and federal laws, code, and regulations;
- d) the applicable portion of the Federal Civil Rights Act of 1964;
- e) the Equal Employment Opportunity Act and the regulations issued by the federal government;
- f) the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- g) all terms, conditions, and requirements set forth in this RFP;
- h) a condition that the proposal submitted was independently arrived at, without collusion;
- i) a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- j) a condition that the firm and any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any offeror fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

7.05

Offer Held firm

Proposals must remain open and valid for at least 90 days from the deadline specified for submission of proposals. In the event award is not made within 90 days, the State will send a written request to all offerors deemed susceptible for award asking offerors to hold their price firm for a longer specified period of time.

7.06

Amendments to Proposals and Withdrawals of Proposals

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to the State's request. After the deadline, offerors may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made. The procurement officer may permit withdrawal of the proposal upon verifying that a substantial mistake has been made.

7.07

Alternate Proposals

Offerors may submit more than one proposal for evaluation.

Alternate proposals (proposals that offer something different than what is requested) will be considered and evaluated according to the evaluation criteria specified in the RFP.

7.08

Subcontractors

Subcontractors will not be allowed.

7.09

Joint Ventures

Joint ventures will not be allowed.

7.10

Disclosure of Proposal Contents and Compliance with North Dakota Open Records Laws

All proposals and other material submitted become the property of the State and may be returned only at the State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).

Offerors may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the offeror must be clearly identified, and the offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information. <http://www.ag.state.nd.us/OpenRecords/ORM.htm>

After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer, in consultation with the Office of the Attorney General, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately.

7.11

Evaluation of Proposals

All proposals will be reviewed to determine if they are responsive to the requirements of this solicitation. The procurement officer or an evaluation committee will evaluate responsive proposals. The evaluation will be based solely on the evaluation factors set forth in this RFP.

7.12

Right of Rejection

The State reserves the right to reject any proposals, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. The procurement officer may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the State. If an offeror does so, the procurement officer may determine the proposal to be non-responsive, and the proposal may be rejected.

The procurement officer may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision,

The State reserves the right to reject any proposal determined to be not responsive, and to reject the proposal of an offeror determined to be not responsible. The State also reserves the right to refrain from making an award if it determines it to be in its best interest.

7.13

Clarification of Offers

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The initial evaluation may be adjusted because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

7.14

Discussions and Best and Final Offers

The State may conduct discussions or request best and final offers with offerors that have submitted proposals determined to be reasonably susceptible for award. The State is not obligated to do so, therefore, vendors should submit their best terms (cost and technical). The purpose of these discussions is to ensure full understanding of the requirements of the RFP and the offeror's proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the proposal evaluation committee. If modifications to the proposal are made as a result of these discussions, the modifications must be put in writing.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made.

7.15

Preference Laws

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident bidder. A "resident" North Dakota bidder, offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded. For a listing of state preference laws, visit the following website:

http://tpps.das.state.or.us/purchasing/pref-law/reciprocal_detail.php or contact the North Dakota State Procurement Office at 701-328-2683.

7.16

Contract Negotiation

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal.

If contract negotiations are commenced, they will be by e-mail or telephone or at:

Disability Services Division
Prairie Hills Plaza, 2nd Floor, Conf. Rm. 406
1237 W. Divide Avenue
Bismarck, ND 58501-1208

If contract negotiations are held, the offeror will be responsible for all cost including its travel and per diem expenses.

7.17

Notice of Intent to Award - Offeror Notification of Selection

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award and send copies to all offerors. The Notice of Intent Award will set out the names and addresses of all offerors and identify the proposal selected for award. The scores and placement of other offerors will not be part of the Notice of Intent to Award.

The successful offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful offeror and the State sign the contract.

7.18

Protest and Appeal

North Dakota law provides that an interested party may protest a solicitation.

If an interested party wishes to protest the content of this RFP, the protest must be received, in writing, by the procurement officer at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract.

If an offeror wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the procurement officer within seven calendar days after the date the Notice of Intent to Award was issued.

SECTION EIGHT ATTACHMENTS

8.01

Attachments

- A. Proposal Evaluation Form
- B. Contract Template

PROPOSAL EVALUATION FORM

All proposals will be reviewed for responsiveness and then evaluated using the criteria set out herein.

INSTRUCTIONS FOR EVALUATORS

Each evaluation criterion has been assigned a specific number of points. The questions under each evaluated area help you measure the quality of the offeror's response. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.

RATING SCALE FOR ASSESSING VENDOR RESPONSES

This rating scale is intended to establish guidelines within that range to ensure members of the RFP evaluation committee perform their evaluation with consistency. You may assign any value for a given criteria from 0 to the maximum number of points. A zero value typically constitutes no response or an inability of the vendor to meet the criterion. In contrast, the maximum value should constitute a high standard of meeting the criterion. If a specific criterion would only yield a yes or no response (e.g., offeror can submit an electronic report in required format by noon Friday), the evaluator should award either the maximum points or a zero.

For Example: "Experience and Qualifications" is an evaluation criteria receiving a weighting of 20% of the total possible points. Using a 100 Point Scale, a maximum of 20 points can be awarded. The rating scale would be:

Rating Scale (<i>20 POINT</i> Maximum)	
Point Value	Explanation
<i>0</i>	None. Not addressed or response of no value
<i>1-5</i>	Fair. Limited applicability
<i>6-10</i>	Good. Some applicability
<i>11-15</i>	Very Good. Substantial applicability
<i>16-20</i>	Excellent. Total applicability

COST PROPOSAL

If offerors were required to place cost proposals in a separate sealed envelope, do not open the cost proposal until the technical proposals have been evaluated.

Not all members of the evaluation need to evaluate the cost proposal. The cost proposals may be evaluated by selected members of the evaluation committee, reviewed by group, and recorded on the evaluation summary sheets.

Any prompt payment discounts terms offered by the vendor are not taken into consideration in evaluating cost. However, the cost proposals of nonresident offerors may be adjusted by the application of preference laws, if applicable. Contact the State Procurement Office at 701-328-2683 for assistance in applying preference laws.

EVALUATION CRITERIA AND SCORING

Person or Firm Name _____

Name of Proposal Evaluation (PEC) Member _____

Date of Review _____

RFP Title/Number _____

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS CONTRACT IS 100

A.01

Understanding of the Project

Weight 5 Percent. Maximum Point Value for this Section

100 Points x 5 percent = 5 Points

Rating Scale (5 Point Maximum)	
Point Value	Explanation
1	None. Not addressed or response of no value
2	Fair. Limited applicability
3	Good. Some applicability
4	Very Good. Substantial applicability
5	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.

[a] Has the offeror demonstrated a thorough understanding of the purpose and scope of the project?

EVALUATOR'S NOTES _____

[b] How well has the offeror identified pertinent issues and potential problems related to the project?

EVALUATOR'S NOTES _____

[c] Has the offeror demonstrated an understanding of the services the State expects it to provide?

EVALUATOR'S NOTES _____

[d] Has the offeror demonstrated an understanding of the State's requirement regarding timely payments to consumers, employees and vendors?

EVALUATOR'S NOTES _____

[e] Is the proposal submitted responsive to all material requirements in the RFP?

EVALUATOR'S NOTES _____

EVALUATOR'S POINT TOTAL FOR A.01 _____

A.02

Methodology Used for the Project

Weight 25 Percent. Maximum Point Value for this Section

100 Points x 25 Percent = 25 Points

Rating Scale (25 Point Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-8	Fair. Limited applicability
9-13	Good. Some applicability
14-19	Very Good. Substantial applicability
20-25	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.

[a] Does the methodology depict a logical approach to fulfilling the requirements of the RFP?

EVALUATOR'S NOTES _____

[b] Does the methodology match and achieve the objectives set out in the proposal?

EVALUATOR'S NOTES _____

[c] Does the methodology have provisions for quality assurance?

EVALUATOR'S NOTES _____

EVALUATOR'S POINT TOTAL FOR A.02 _____

A.03

Management Plan for the Project

Weight 25 Percent. Maximum Point Value for this Section
100 Points x 25 Percent = 25 Points

Rating Scale (25 Point Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-8	Fair. Limited applicability
9-13	Good. Some applicability
14-19	Very Good. Substantial applicability
20-25	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.

[a] How well does the management plan support all of the project requirements and logically lead to the services and deliverables required in the RFP?

EVALUATOR'S NOTES _____

[b] How well is accountability completely and clearly defined?

EVALUATOR'S NOTES _____

[c] Is the organization of the project team clear?

EVALUATOR'S NOTES _____

[d] How well does the management plan illustrate the lines of authority and communication?

EVALUATOR'S NOTES _____

[e] To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?

EVALUATOR'S NOTES _____

[f] Does it appear that offeror can meet the schedule set out in the RFP?

EVALUATOR'S NOTES _____

[g] Has the contractor gone beyond the minimum tasks necessary to meet the objectives of the RFP?

EVALUATOR'S NOTES _____

[h] Is the proposal practical, feasible, and cost effective?

EVALUATOR'S NOTES _____

EVALUATOR'S POINT TOTAL FOR A.03 _____

A.04

Experience and Qualifications

Weight 25 Percent. Maximum Point Value for this Section

100 Points x 25 Percent = 25 Points

Rating Scale (25 Point Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-8	Fair. Limited applicability
9-13	Good. Some applicability
14-19	Very Good. Substantial applicability
20-25	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.

Questions regarding the personnel.

[a] Do the individuals assigned to the project have experience on similar projects?

EVALUATOR'S NOTES _____

[b] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?

EVALUATOR'S NOTES _____

[c] How extensive is the applicable education and experience of the personnel designated to work on the project?

EVALUATOR'S NOTES _____

Questions regarding the firm.

[d] Has the firm demonstrated experience in delivering similar services?

EVALUATOR'S NOTES _____

[e] How successful is the general history of the firm regarding timely and successful completion of projects?

EVALUATOR'S NOTES _____

[f] Has the firm provided contact information and permission to contact state agencies where they previously or currently provide Fiscal Agent type services?

EVALUATOR'S NOTES _____

EVALUATOR'S POINT TOTAL FOR A.04 _____

A.05

Contract Cost

Weight 20 Percent. Maximum Point Value for this Section
100 Points x 20 Percent = 20 Points

Applying Preference Laws

Any prompt payment discounts terms proposed by the offeror will not be considered in evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. § 44-08-01). The preference given to a resident offeror will be equal to the preference given or required by the state of the nonresident offeror (i.e. reciprocal preference).

When evaluating cost proposals from nonresident (out-of-state) offerors, determine whether the offeror's state of residence has a preference law for vendors resident in that state. The cost proposal of the nonresident offeror will be increased by the same percentage of preference given to vendors resident in that state.

For example, if the state law of the nonresident offeror requires a 5% preference for vendors resident in that state, the procurement officer will increase that offeror's cost proposal by 5% before evaluation.

See <http://www.state.nd.us/csd/spo/resources.html> for a list of States Preference Laws or contact the North Dakota State Procurement Office at 701-328-2683.

Converting Cost to Points

After applying any reciprocal preference, the lowest cost proposal (Fiscal Agent fee per month per consumer) will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined as follows:

Price of Lowest Cost Proposal

Price of Proposal Being Rated X Total Points for Cost Available = Awarded Points

COST PROPOSAL EVALUATION

EVALUATOR'S POINT TOTAL FOR A.05

NOTES:

Request for Proposal Evaluation Summary

Name of RFP:		
RFP Number		
Vendor Being Evaluated:		
Evaluator Name:		
Date:		
Technical Evaluation (Maximum 80 Points)	Maximum Points by Category	Score
1. Understanding of the Project	5	
2. Methodology Used for the Project:	25	
3. Management Plan for the Project:	25	
4. Experience and Qualifications:	25	
Cost Evaluation (Maximum 20 Points) 1. Make adjustments for reciprocal preference, if necessary. See list of States Preference Laws: http://www.state.nd.us/csd/spo/resources.html 2. Calculated points awarded for price. <u>Price of Lowest Cost Proposal</u> Price of Proposal Being Rated X 20 Points = Awarded Points		
5. Cost	20	
Total		

**Request for Proposal
Evaluation Totals**

Name of RFP:						
Name of Offeror:						
Date:						
Technical Evaluation Criteria	Maximum 80 Points	Evaluator	Evaluator	Evaluator	Evaluator	Evaluator
1. Understanding of the Project	5					
2. Methodology Used for the Project:	25					
3. Management Plan for the Project:	25					
4. Experience and Qualifications:	25					
Evaluator Totals						
Grand Total		Note: Sum of all individual scores.				
Technical Proposal Score		Note: Total of individual points divided by the number of evaluators (80 POINT MAXIMUM).				
Cost Propose Score		Note: (20 POINT MAXIMUM).				
TOTAL						

**Request for Proposal
Summary of Evaluation Committee Totals**

Name of RFP:						
Date:						
Technical Evaluation Criteria	Maximum 80 Points	Vendor 1	Vendor 2	Vendor 3	Vendor 4	Vendor 5
1. Understanding of the Project	5					
2. Methodology Used for the Project:	25					
3. Management Plan for the Project:	25					
4. Experience and Qualifications:	25					
Technical Proposal Score						
Cost Proposals Score						
Grand Total						

ATTACHMENT B

CONTRACT #

PURCHASE OF SERVICE AGREEMENT

WHEREAS, the State of North Dakota, acting through its North Dakota Department of Human Services, Disability Services Division (State), has determined the services referred to in the paragraph below entitled "Scope of Service" should be purchased; and

WHEREAS, [VENDOR NAME AND ADDRESS], (Vendor) proposes to provide those services;

NOW, THEREFORE, the State and Vendor enter into the following:

I. TERM OF THE AGREEMENT

The term of this agreement shall be from the ____ day of ____ 200_ through the ____ day of ____ 200_. However, this agreement may be terminated with or without cause by either party giving the other party thirty (30) days prior written notice.

II. SCOPE OF SERVICE

The Vendor agrees to provide

III. COMPENSATION

The State, upon written request of the Vendor, agrees to pay the Vendor \$_____ for completing the scope of service. Total payment under the terms of this agreement shall not exceed \$_____. **Final payment requests shall be submitted to the State no later than thirty (30) days after the expiration of this agreement.**

IV. VENDOR'S UNDERSTANDING OF TERM OF FUNDING

The Vendor understands that this agreement is a one-time agreement, and acknowledges that it has been furnished no assurances that this agreement may be extended for periods beyond its termination date.

V. VENDOR ASSURANCES

This agreement shall be construed according to the laws of the State of North Dakota. In connection with the furnishing of supplies or performance of work under this agreement, persons who contract with or receive funds to provide services to the North Dakota Department of Human Services are obligated and agree to comply with all local, state and federal laws, regulations and executive orders related to the performance of this agreement including but not limited to the following: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the North Dakota Human Rights Act, the Drug Abuse Prevention Treatment and Rehabilitation Act of 1970, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Alcohol, Drug Abuse and Mental Health Administration Reorganization Act of 1992, the Pro-children Act of 1994 and the Drug-free Workplace Act of 1988. Questions regarding the provision of services according to these Acts may be directed to Krista I. Andrews, Contract Officer, North Dakota Department of Human Services, Judicial Wing, State Capitol, 600 E. Boulevard, Bismarck, ND 58505 (701-328-2311 or 701-328-3975 TDD).

The Vendor certifies by signing this agreement that neither the Vendor, Subcontractor, nor their principals, are presently debarred, declared ineligible or voluntarily excluded from participation in transactions with the State or Federal Government by any Department or Agency of the Federal Government.

Vendor shall be an approved vendor with the Office of Management and Budget within the State of North Dakota as required by NDCC § 54-44.4-09.

VI. AUTHORITY TO CONTRACT

The Vendor shall not have the authority to contract for or on behalf of or incur obligations on behalf of the State. However, the Vendor may subcontract with qualified Vendors of services provided that any such subcontract shall acknowledge the binding nature of this agreement, and incorporate this agreement, together with its attachments as appropriate. The Vendor agrees to be solely responsible for the performance of any subcontractor.

VII. INDEPENDENT ENTITY

The Vendor shall perform as an independent entity under this agreement. The Vendor, its employees, agents, or representatives are not employees of the State for all purposes, including but not limited to, the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workers' Compensation Act. No part of this agreement shall be construed to represent the creation of an employer/employee relationship. The Vendor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Vendor's activities and responsibilities under this agreement.

VIII. NONPERFORMANCE

Failure by the Vendor to perform the terms of this agreement shall constitute a breach of contract, and shall result in the immediate termination of the agreement. In the event of a termination for breach by the Vendor, the State may retain, as liquidated damages, any payment to be made under this agreement which remains unpaid at the time of the breach, and may also recover from the Vendor, those amounts already paid for individual items of work which are incomplete at the time of the breach.

However, should a breach by the Vendor be caused by circumstances, beyond the control of the Vendor, and no fault of its own, so as to render the agreement impossible of performance by the Vendor, then the agreement shall be terminated. In the event of a breach, by the Vendor, in such circumstances, the State may set off, against any liability or obligations owed to the Vendor, under this agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach, but shall not be entitled to liquidated damages.

The State shall give written notice, to the Vendor, of the termination, which notice shall specify the effective date thereof.

IX. TERMINATION OF AGREEMENT FOR INADEQUACY OF FUNDS

It is agreed that in the event appropriations to the Department of Human Services are not obtained and continued at a level sufficient to allow for payments to the Vendor, for the services identified in Paragraph II, the obligations of each party hereunder may be terminated at the option of the State, provided that any such termination shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

X. INDEMNITY

Vendor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the Vendor or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement. The legal defense provided by Vendor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Vendor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

XI. INSURANCE

Vendor shall secure and keep in force during the term of this agreement and Vendor shall require all subcontractors, prior to commencement of an agreement between Vendor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Vendor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Vendor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
 - a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b) a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;

- c) a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;
- d) a provision that Vendor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the state and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Vendor's insurance and shall not contribute with it;
- e) cross liability/severability of interest for all policies and endorsements;
- 6) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
- 7) The Vendor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 8) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

XII. ACCESS TO BOOKS AND RECORDS

The State, federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Vendor which are pertinent to the services provided under this agreement for the purpose of making an audit, examination, or making excerpts and transcripts. This documentation shall be available for a period of three (3) years from the date of submission of the final expenditures report.

XIII. NOTICE

Any notice required or permitted to be given pursuant to this agreement may be personally served on either party by the party giving such notice, or may be served by certified mail, return receipt requested, addressed to the executive office of the party upon whom service is made.

XIV. INTEGRATION AND MODIFICATION

This contract constitutes the entire agreement between the Vendor and the State. No alteration, amendment, or modification in the provisions of this agreement shall be effective unless it is reduced to writing, signed by the parties and attached hereto.

XV. COLLATERAL CONTRACTS

Where there exists any inconsistency between this agreement and other provisions of collateral contractual agreements, which are made a part of this agreement by, reference or otherwise, the provisions of this agreement shall control.

XVI. APPLICABLE LAW

This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

XVII. ASSIGNMENT

Neither Party shall assign this agreement and rights without the written approval of the other Party. Such approval shall not be unreasonably withheld. This agreement shall be equally binding on the respective Parties, their successors and assigns.

XVIII. CONFIDENTIAL INFORMATION

The Vendor agrees not to use or disclose any information it receives from the State under this agreement that is confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this agreement or as authorized in advance by the State. The State agrees not to disclose any information it receives from the Vendor which the Vendor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code § 44-04-18. The duty of the State and the Vendor to maintain confidentiality of information under this section continues beyond the term of this agreement, including any extensions or renewals.

XIX. OWNERSHIP OF WORK PRODUCT

All work product, equipment or materials created or purchased under this agreement belong to the State and must be delivered to State at State's request upon termination of this agreement. Vendor agrees that all materials prepared under this agreement are "works for hire" within the meaning of copyright laws of the United States and assigns to the State all rights and interests Vendor may have in the materials it prepares under this agreement, including any right to derivative use of the material. Vendor shall execute all necessary documents to enable the State to protect its rights under this section. Use of work product or materials for purposes other than the scope of this agreement must be approved in writing by the State.

XX. COMPLIANCE WITH PUBLIC RECORDS LAWS

Vendor understands that, except for disclosures prohibited in Section XVIII, the State must disclose to the public upon request any records it receives from Vendor. Vendor further understands that any records, which are obtained or generated by the Vendor under this agreement, except for records that are confidential under Section XVIII, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Vendor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

XXI. ATTORNEY FEES

In the event a lawsuit is instituted by the State to obtain performance due to any kind under this agreement, and the State is the prevailing party, Vendor shall, except when prohibited by N.D.C.C. § 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

XXII. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The State does not waive any right to a jury trial.

[VENDOR]

By _____ DATE

Its _____
(TITLE)

Vendor's Federal Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By _____ DATE
YVONNE SMITH, DIRECTOR
DISABILITY SERVICES DIVISION

By _____ DATE
KRISTA L. ANDREWS
CONTRACT OFFICER